

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

HARRISON COMPANY LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:19-CV-1057-B
	§	
A-Z WHOLESALERS INC. and	§	
BARKAT G. ALI,	§	
	§	
Defendants.	§	

**HARRISON COMPANY, LLC’S REPLY TO
SHOW CAUSE ORDER**

Pursuant to the Court’s *Order to Show Cause* (Doc. 35) (the “Show Cause Order”), Plaintiff Harrison Company, LLC (“Harrison”) files this Reply to the Court’s Order to Show Cause and states:

INTRODUCTION

The Court ordered Defendants to provide a substantive explanation as to “why each answer is necessary and should not be stricken under Federal Rule of Civil Procedure 12(f).” Defendants did not do so; rather, Defendants filed an Amended Renewed Motion for Leave to File First Amended Answer (Doc. 36) (the “Motion”). The Motion, at most, explains why Defendants did not comply with the Court’s earlier Order (Doc. 31). Because the Motion does not comply with the Show Cause Order by explaining why each answer is necessary, the Court should strike Defendants’ affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f).

PROCEDURAL BACKGROUND

Defendants sought leave to file their First Amended Answer on December 19, 2019 (Docs. 15-16). Specifically, Defendants sought leave to: (a) add a third-party claim against Imperial Trading Co., LLC; (b) add twenty new affirmative-defenses; and, (c) demand a trial by jury. (*See id.*)

On February 26, 2020, the Court entered an order on Defendants' motion (Doc 31), and Defendants filed their Renewed Motion for Leave to File First Amended Answer (Doc. 33).

On March 3, 2020, the Court issued its Show Cause Order, expressed its concern with the "potential number and vagueness of Defendants' affirmative and other defenses," and ordered Defendants to show "why each answer is necessary and should not be stricken under Federal Rule of Civil Procedure 12(f)." (Doc. 35)

On March 5, 2020, Defendants filed their Amended Renewed Motion for Leave to File First Amended Answer (Doc. 36). Upon receipt of the Motion, Harrison's counsel contacted Defendants' counsel to inquire whether they intended the Motion to be Defendants' response to the Show Cause Order, and Defendants' counsel said it was.

ARGUMENT & AUTHORITIES

Federal Rule of Civil Procedure 12(f) allows the Court to sua sponte "strike from a pleading an insufficient defense or any redundant, immaterial, [or] impertinent . . . matter." Rule 12(f) tests the legal sufficiency of the claims asserted in the pleading, much like the motion to dismiss standard applied under Federal Rule of Civil Procedure 12(b)(6). *See Resonant Sensors, Inc. v. SRU Biosystems, Inc.*, 2010 WL 11530761, at *2 (N.D. Tex. June 8, 2010); *see also Perez v. ZTE (USA), Inc.*, 2019 WL 1471011, at *1 (N.D. Tex. Apr. 2, 2019). Accordingly, it is Harrison's understanding that the Court's Show Cause Order required Defendants to submit *some* explanation

as to why each of their vague affirmative defenses has merit and to explain why each is not duplicative or “redundant” with respect to another defense.

Defendants did not comply with the Court’s Show Cause Order, and the Motion (Doc. 36) merely states that Defendants’ First Amended Answer: (a) removes all claims against Imperial; and, (b) removes withdrawn counsel from the signature block. (*Id.*) The Motion does not address the Court’s questions.

Because Defendants did not explain: (a) why any of their numerous affirmative defenses have merit; and, (b) why each of those twenty defenses is necessary (and not redundant), Defendants did not meet their burden and did not comply with the Show Cause Order.

WHEREFORE, Harrison respectfully requests that the Court deny Defendants’ Amended Renewed Motion for Leave to File First Amended Answer (Doc. 33), deny, if necessary, Defendants’ Amended Renewed Motion for Leave to File First Amended Answer (Doc. 36), strike Defendants’ affirmative defenses, and grant Harrison such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

/s/ David L. Swanson

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I certify that on March 18, 2020, I served this document on all counsel of record via the ECF system and/or email.

/s/ Anna K. Finger

Anna K. Finger